

APPLICANT(S): ESHEL, Yoram et al.  
SERIAL NO.: 10/520,054  
FILED: April 25, 2005  
Page 5

## REMARKS

The present application contains claims 1-17, 22, 23 and 41 of which claims 1, 22, and 41 are independent claims. Claims 1-8, 10, 22, 23 and 41 stand rejected under 35 U.S.C. 102 as being anticipated by US 6,071,239 to Cribbs et al. Claims 9, 11-17 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Cribbs in view of US 6,645,162 to Friedman et al.

The Examiner held an interview on April 12, 2007 with Mr. Sanford Colb, at the time representing the inventors, in which arguments regarding claim 1 provided to the Examiner in a written Memorandum dated April 10, 2007 were discussed. In an Office Communication dated April 18, 2007 summarizing the April 12, 2007 interview, the Examiner reports that agreement was reached in the interview that amendments to claim 1 proposed at the interview would appear, subject to an updated search, to distinguish the claim over the art of record.

The undersigned does not have a copy of the proposed amendments specific to the present application. However, arguments and amendments similar to those presented at the interview for the present application were also presented for applications 10/021,238 and 10/250,955. The amendments suggested and agreed upon for applications 10/021,238 and 10/250,955 have been adapted for the present application and independent claims 1, 22 and 41 have been amended accordingly. The arguments presented in the April 12, 2007 interview for the present application are quoted below as they appear in the written Memorandum of April 10, 2007.

"The basic difference between Cribbs and Eshel is that Cribbs uses a geometrical selectivity for the destruction of fat cells, whereas Eshel proposes **anatomical selectivity** for that purpose. This results in a difference in the mode of action and in the destruction result.

There are several different types of selectivity related to cells and tissue, for example, chemical selectivity, electrical selectivity, anatomical selectivity, geometrical selectivity and others, each of which has its own mode of action. Eshel and Cribbs are both suggesting selective destruction of the majority of fat cells within a target volume without causing damage to the surrounding tissue.

According to Cribbs' solution all the cells within the target volume are destroyed. The outcome of applying the ultrasonic energy according to Cribbs' method is a complete destruction of the tissue within the target zone regardless of the kind of tissue it includes. According to the description of Cribbs, the tissue inside each focal zone is destroyed completely as the technology is not limited to the destruction of fat cells (Col. 3 lines 13-14), while the surrounding tissue of

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Page 6

each focal zone remains intact if the distance between each focal zone is designed to allow live tissue to remain.

In contrast, the selectivity provided by Eshel is an **anatomical selectivity within the target volume**. This feature is clearly recited in claim 1 in the phrase marked in bold letters. The anatomical selectivity enables selective destruction of fat cells without causing damage to non fat cells **which are part of the target volume**.

The anatomic selectivity solution provided by Eshel is based on a particular selection of parameters that allows for selective destruction of fat cells **within** the target volume without damaging non fat cells **inside** the target volume. As seen in Figure 1 of the present application, which is appended hereto, the blocks designated by reference numeral 62 and 64 show typical portion of a target volume region containing adipose tissue, respectively before and after lipolysis. It is seen from a comparison of blocks 62 and 64 that within the region containing adipose tissue, the adipose tissue, designated by reference numeral 66, is lysed, while non adipose tissue, such as connective tissue, designated by reference numeral 68, is not lysed (p. 8 lines 25-33; p. 9 line 1).

Based on the discussion set forth above, the Applicant believes that claim 1 as currently drafted is allowable."

In view of the above, applicants submit that all the independent claims in the present application are patentable over the art of record and that claims dependent on the independent claims are patentable because of their dependence and/or because they contain patentable limitations.

Upon indication from the Examiner that the claims are allowable, applicants agree to file terminal disclaimers as might be required to avoid possible double patenting rejections.

The undersigned thanks the Examiner for the courtesy of telephone interviews with him and for his efficient and prompt assistance in resolving procedural and substantive issues with respect to the applicants' application.

An action on the merits is respectfully awaited.

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Respectfully submitted,  
ESHEL et al.

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